

Civil Revision Application No 1717 of 95

Date of decision: 07/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SYNDICATE BANK

vs

BIHARILAL MINURAM SHARMA & 2

Appearance:

MR ABHIJIT JOSHI for Petitioner

MR M.B. Gandhi for Respondent No. 3

Coram : MR.JUSTICE S.D.SHAH

1. The plaintiff bank has moved this petition against an order passed below Exhibit-102 by the learned City Civil Judge, whereby the plaintiff bank called upon the defendant No.3,

allegedly the guarantor of defendant No.2 to produce the original of two xerox copies of the documents of 1981. The xerox copies of the documents are already produced by the plaintiff bank. It is the case of the plaintiff bank that in order to prove that defendant No.3 is guarantor of the defendants No.1 and 2, over and above the document of guarantee allegedly executed by the defendant No.3, these two documents are necessary to be proved. The original of such documents are allegedly in possession and custody of defendant No.3 and therefore the bank has tendered the application under Order 11 Rule 14 of the Code of Civil Procedure.

#### 14. PRODUCTION OF DOCUMENTS

"It shall be lawful for the Court, at any time during the pendency of any suit, to order the production of any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just."

2. Reading the aforesaid provision, it is no doubt true that it leaves discretion to the Court at any time during the pendency of any suit, to order the production of any party thereto of such documents in his possession or power, relating to any matter in question in such suit. In the present case, the application given by the plaintiff bank is opposed by the respondent No.3. The case of the defendant No.3 is that he is simply the signatory to the writing and that he is not the guarantor. In order to substantiate the case of the bank that the respondent No.3 has also tendered certain xerox copies to prove his case, the bank wants to rely upon such documents which are said to be in possession and custody of the defendant No.3. The xerox copy thereof is already produced. Since the original can be in possession of defendant No.3, the application is tendered. The application is rejected by the trial court on the ground that the said two documents are not relevant. In my opinion, the order of the trial court is not sustainable in law. It is not the relevancy of document which is required to be looked into at a stage when application under Rule 14 of Order 11 is tendered. In the present case, since the xerox copies of the documents are already produced by the bank and they relate to the transaction of defendant No.3, for whatever their worth, they may be relevant to the plaintiff bank in establishing their case that defendant No.3 was the guarantor. At this stage it will be hazardous to reach a conclusion that the documents are not relevant at all. If the defendant No.3 takes up the stand that he is not in possession and custody of such documents, xerox copies which are produced by the plaintiff bank, can be exhibited as secondary evidence. In this view of the settled legal position and in view of the observations

made by His Lordship, A.P. Ravani, J. (as His Lordship then was) in 1989 GLH (UJ) 26, the trial court ought to have granted the application. The order of the trial court being unsustainable is quashed and set aside and the application of the plaintiff bank is granted. The defendant No.3 is permitted to produce the original of the said documents and in case he is not possessed of or in custody of such documents, he may file an affidavit to that effect, upon which, it will be open to the plaintiff bank to rely upon the xerox copies as secondary evidence. Rule is made absolute accordingly. There shall be no order as to costs.

-----